

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

CRL.A.No. 1920 of 2003(C)

AGAINST THE ORDER IN CRLP.405/2003 Dated 24/09/2003
CC.1564/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

APPELLANT: PETITIONER/COMPLAINANT.

P.M.MADHU, MANAGING PARTNER,
SIX A.M. FUNDS AND FINANCE,
THYKKOTIL BUILDING, VAZHAKKALA,
THRIKKAKARA.

BY ADV. SRI.K.G.ANIL BABU

RESPONDENTS: ACCUSED AND STATE.

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1. RANI SASIKUMAR, PROPRIETRIX,
AKSHAY BUSINESS COMMUNICATION, ALUVA.
 2. THE STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERLA,
ERNAKULAM.

BY ADV. SRI.K.SUNILKUMAR
PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M.JAMES, J.

Crl.A No. 1920 of 2003 (C)

Dated this the 26th day of February, 2007

J U D G M E N T

The complainant in C.C.No.1564/2000 on the file of Judicial Magistrate of the First Class Court-I, Aluva, is the appellant. The complaint was preferred by the Managing Partner of Sixam Funds and Finance. Exhibit P1 cheque was issued by the Proprietrix of Akshay Business Communication, the first respondent to the appellant. It was dishonoured on presentation and, therefore, because of the non-payment of the amount covered under Exhibit P1 cheque on demand, the complaint was filed.

2. After considering five documents filed along with proof affidavit of the complainant, the court below found at paragraph (6) of the judgment as follows:-

“That the complainant filed proof affidavit that he is the managing partner authorised to represent the Firm etc.. He has not produced any document to show that he is either the managing partner or the person authorised to

represent. Similarly there is no evidence to show that the accused herein is the proprietrix of Akshay business communication from whose account the cheque is issued. Complainant is duty bound to prove all these aspects so as to warrant a conviction. The evidence in this case shows that the cheque issued on behalf of Akshay business communication of Six A.M. Funds and Finance has been dishonoured and a notice was sent the amount is not so far made. So much of evidence alone is not sufficient to prove that the complainant is the authorised person to represent the complainant Firm and accused is the proprietrix of the Firm from whose account Ext.P1 cheque is issued. Due to the above infirmities I hold that the prosecution has failed in proving the charge I find her not guilty for offence U/s.138 of the N.I.Act.”

3. When the matter came up for consideration, during the hearing, the learned counsel for the appellant undertook to produce the partnership deed as well as the authorisation in favour of the complainant-appellant. Accordingly, through Crl.M.A.No.2387/2007, the appellant has produced the notarised copy of the partnership deed, dated

01/07/1998. Similarly, an authorisation, in original, dated 18/01/2000, authorising the appellant to act on behalf of the firm in all legal matters is also produced. The learned counsel for the appellant submits that copies of these two documents as well as the copy of the Crl.M.A.No.2387/2007 had been supplied to the learned counsel Sri K.S.Sunil Kumar, appearing for the first respondent. But no document has been produced from the side of the first respondent.

4. In the above facts situation, I am of the opinion that an opportunity be given to the appellant to substantiate the partnership deed, as well as the authorisation issued in favour of the appellant by the other partners of the firm.

5. In the result, I set aside the impugned judgment dated 03/07/2003 and restore C.C.No.1564/2000, to the file of Judicial Magistrate of the First Class Court-I, Aluva. The matter is remitted to the court below for fresh trial and disposal, according to law. As the case is of the year 2000, the learned Magistrate shall dispose of the matter at the earliest and in any case, within three months from the date of appearance of the parties, before that court.

6. The parties shall appear before that court on 26/03/2007.

7. The Registry shall send both the documents, produced along with Crl.M.A.No.2387/2007, viz., the deed of reconstitution of partnership, dated 01/07/1998, and the authorisation, dated 18/01/2000, to the court below along with the records of that court. This shall be done immediately, as the matter had been remitted to the court below.

The appeal is allowed as above.

(J.M.JAMES)
Judge

ms

J.M.JAMES, J.

Crl.A No. 1920 of 2003 (C)

J U D G M E N T

26th February, 2007